Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Provision of Directory Listing Information	)	
Under the Communications Act of 1934,	)	CC Docket No. 99-273
As Amended	)	
	)	
The Use of N11 Codes and Other Abbreviated	)	CC Docket No. 92-105
Dialing Arrangements	)	
	)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan	)	
	)	
TO: The Commission	)	

COMMENTS OF INFONXX, INC.

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SUMMARY

The telecommunications industry is generally a declining cost industry, but one area where prices are going *up* is local wireline directory assistance ("DA"). Though the Commission has taken steps to promote wholesale DA competition, and has found the wholesale DA market competitive, retail wireline DA service remains a vestige of monopoly control. This multi-billion dollar business continues to see rising prices and no competition. In the recent *Notice of Proposed Rulemaking* in this proceeding, the Commission correctly asks the question: what steps should be taken to promote retail wireline DA competition? Some Commission intervention clearly is needed because local exchange carriers ("LECs") have exclusive control over both the traditional numbers consumers use to access DA services – 411 and 555-1212 – and the technical facilities that must be modified to enable consumer access to competitive DA services. And the LECs have shown that they are willing to exploit that control to prevent or delay the entry of competitive DA providers into the retail market. The time has come for the Commission to remedy this situation and assure consumer access to a broad array of competitive, enhanced DA services.

The most effective means for assuring consumer access to competitive DA services need not be administratively or technically burdensome for LECs, competitors, consumers or the Commission. Requiring LECs to route calls to competitive DA providers' already-assigned 555 numbers would be administratively and technically uncomplicated and would simply give effect to a Commission numbering decision – that entities other than LECs should be able to use national and regional 555 numbers – adopted over eight years ago. Moreover, consumers can readily adapt to using 555 numbers for competitive DA services because they are already familiar with the use of a 555 number (555-1212) for directory assistance. By contrast, the 411 presubscription proposal also under consideration in this

proceeding would be expensive, administratively complicated and confusing for consumers and would do little to eliminate the incumbent LECs' dominance in the retail DA market.

Once consumers are assured of easy access to DA services from the incumbent and competitors alike, the final step the Commission must take – a step that regulators in the United Kingdom and Germany already have taken – is to eliminate the traditional 411 and 555-1212 DA access numbers. Without this essential step, ingrained consumer habits formed over years of LEC monopoly control over the local retail DA market will significantly hamper the development of genuine competition in wireline retail DA services. And by adopting a comprehensive transition plan that allows consumers to adapt to the new DA dialing pattern, the Commission can take this step without undue consumer confusion or disruption.

Wireless users, customers of competitive local exchange carriers ("CLECs"), and large corporate users have seen the fruits of competition in the wholesale DA market: high-quality, customer-focused directory assistance services featuring enhancements such as "yellow page" searches, movie show times, restaurant reservations, and traffic and weather reports. Competitive directory assistance providers like InfoNXX are eager to offer these and other enhanced DA services – including InfoNXX's pioneering MobileSource℠ service for wireless numbers and TeleMas℠ Spanish-language DA services – on a retail basis to a broader consumer audience. However, to date competitors' efforts to expand their services have been stymied by the incumbent LECs' control over the numbering resources necessary to allow consumers to access DA services at retail. If the Commission takes the targeted regulatory action outlined here, Congress' goal of promoting competition in *all* telecommunications markets will be advanced and consumers will see significant benefits in the quality, price and scope of directory assistance services.

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COMMENTS OF INFONXX, INC.

InfoNXX, Inc. ("InfoNXX"), one of the nation's first and most innovative competitive directory assistance ("DA") providers, submits these comments in response to the recent *Notice of Proposed Rulemaking* in the above-referenced proceedings to urge the Commission promptly to take meaningful steps to promote competition in the retail directory assistance market. The Telecommunications Act of 1996 called for competition in all segments of the industry, but one area that has not witnessed robust competition is the multi-billion dollar wireline DA market. InfoNXX and others have introduced significant competition in the wholesale and large business DA markets – competition that has brought high-quality, innovative, enhanced DA services to competitive local exchange, wireless and corporate users. But efforts to bring these competitive benefits to the wider retail market have been stymied by the dominant local exchange carriers' ("LECs'") control over the numbering resources that

afford access to retail DA customers. The time has come for the Commission to open the door to robust competition – and the accompanying consumer benefits – in the retail DA market.

Commission action is needed because the wireline DA market has been hamstrung by a dominant provider who controls both the traditional medium for delivering the service (the 411 access code and 555-1212) and the technical facilities that must be modified to allow new entrants to provide competing services (*i.e.*, local switching facilities). No amount of polite requests from DA competitors will alter the market incentives that encourage behavior designed to preserve the dominant LECs' control of the DA market. In these circumstances, regulatory intervention is necessary to ensure that wireline consumers have access to competitive alternatives. Accordingly, the Commission should take concrete steps to remove the entry barriers and enable the emergence of competition in the retail DA market.

I. PROMOTING COMPETITION IN THE RETAIL DIRECTORY ASSISTANCE MARKET WILL SERVE CONGRESS'S GOALS AND THE PUBLIC INTEREST.

Prompt Commission action to promote competition in the retail DA market is fully consistent with the Telecommunications Act of 1996 ("1996 Act") and the public interest. As the Commission noted in the *First Report and Order* in this proceeding, the 1996 Act establishes a "pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening *all telecommunications markets* to competition."[1] As the Commission recognized in the wholesale DA context, directory assistance is rapidly developing into an independent telecommunications market in which competitive DA providers

[1] *Provision of Directory Listing Information Under the Telecommunications Act of 1934, As Amended*, First Report and Order, 16 FCC Rcd 2736, 2739 (2001) (quoting S. Conf. Rep. No. 104-230, at 1 (1996) (emphasis added) ("*SLI/DA First Report and Order*").

"play an increasingly important role in ensuring that consumers receive the benefits of competition in all telecommunications-related services."[2] Indeed, competing directory assistance providers are poised to offer a broad array of enhanced information and telecommunications services (including call completion) to consumers. Moreover, competitive DA providers are developing services that will offer all telephone subscribers many of the information services so widely enjoyed on the Internet, such as movie show times, weather reports and driving directions. Thus, Commission action to encourage competition in the retail DA market will advance Congress's goals under the 1996 Act of promoting competition in all telecommunications markets and accelerating the deployment of information technologies to all Americans.

Competition in telecommunications markets generally offers significant benefits to consumers by leading to lower prices and higher quality service. The long distance market is illustrative. Since the 1984 breakup of AT&T, consumers have enjoyed dramatic reductions in the price of long distance service. For example, between 1984 and 1999, the industry-wide average revenue per minute for long distance calls declined from $.32 per minute to $.14 per minute ($.11 per minute for domestic calls), a decline of approximately fifty-two percent (52%).[3] Restated in 1999 dollars, the decline is even more dramatic, from $.52 per minute to $.14 per minute, a decline of approximately seventy-three percent (73%).[4] And during this time, long distance providers have improved the quality of service in equally dramatic fashion. Consider,

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[2] *Provision of Directory Listing Information Under the Telecommunications Act of 1934, As Amended*, Notice of Proposed Rulemaking, 14 FCC Rcd 15,550, 15,645 (1999).

[3] *See* Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, *Statistics of the Long Distance Telecommunications Industry*, at 23 (Jan. 2001).

[4] *Id.*

by contrast, the wireline directory assistance market: still dominated by incumbent LECs controlling the traditional DA access numbers of 411 and 555-1212, retail DA is one of the few telecommunications services actually going *up* in price. As the examples below demonstrate, DA customers have seen a steady increase in price as the DA market has been largely deregulated but no competition has developed to offset the pricing decisions of the incumbent LECs. For example, in California, where DA was free in 1980, prices increased to $.15 per call in 1983, $.25 per call in 1984, and $.46 per call in 2000. The increases have been even more dramatic in Texas. While a DA call in Texas cost $.30 in 1991, the price increased steadily through the 1990s to $.75 in 2000, $1.10 in 2001, and $1.25 in 2002.

The benefits to be derived from competition in DA services specifically are already evident in the wireless context. Wireless providers, taking advantage of their freedom to choose among incumbent and competing DA providers, have rewarded market innovators like InfoNXX that offer wireless customers consumer-friendly, enhanced DA services. DA innovations developed in the wireless market include movie show times, driving directions, "yellow page" searches, restaurant reservations, traffic, weather, stock price reports and sports scores. Wireless customers have also enjoyed price benefits, including the availability of free call completion (which in the wireline context typically incurs a fee of between $.50 and $1.00 per call). Wireless customers clearly appreciate these benefits. While wireline DA call volumes have stayed constant or declined in recent years,[5] DA call volumes in the wireless market have increased steadily.[6]

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[5] *See, e.g.*, *Ex parte* letter from Melissa E. Newman, Vice President - Federal Regulatory, Qwest to Gregory Cooke, Assistant Division Chief, Network Services Division, CC Docket 99-273 (May 24, 2001) (citing *Local Directory Assistance Services Report*, Frost & Sullivan 46 (2000)

(continued...)

It is long overdue for wireline DA customers to share in these competitive benefits. Competitive DA providers like InfoNXX are eager to introduce competition and the accompanying benefits into the wireline retail DA market. InfoNXX is confident that wireline DA usage would increase if innovative DA services like those offered to wireless customers were available to wireline customers. However, significant barriers to entry have interfered with the growth of competition in the wireline retail DA market.

II. REGULATORY ACTION IS NEEDED TO REMOVE EXISTING BARRIERS TO ENTRY AND PROMOTE COMPETITION IN THE RETAIL DIRECTORY ASSISTANCE MARKET.

InfoNXX is eager to make enhanced DA services like those developed in the wireless market available directly to wireline customers. InfoNXX has already invested substantial resources in attempting to deploy these services in the wireline market. However, these efforts have been stymied by the LECs' firm control over access to consumers. Significantly, LECs control both 411 and 555-1212, the two numbers consumers traditionally associate with DA, and the technical resources necessary to implement alternative dialing arrangements. Because of these market realities, InfoNXX has encountered three significant impediments to retail DA competition, all of which can readily be alleviated through targeted regulatory action.

(continued . . .)
("*Frost & Sullivan Report*") projecting declining local directory assistance call volumes from 2000-2006); *Ex parte* letter from Mary L. Henze, Executive Director, Federal Government Affairs, BellSouth Corporations to Ms. Magalie Roman Salas, FCC Secretary, CC Docket 99-273, at 2 (June 6, 2001) ("*BellSouth Ex parte*") (citing *Frost & Sullivan Report* for assertion that "overall wireline DA market is declining by –2.4%").

[6] *See, e.g., BellSouth Ex parte* at 2 (citing *Frost & Sullivan Report* for assertion that "wireless DA market growth is 13.3%").

A. Consumers Will Take Advantage Of Competitive Retail Directory Assistance Services Only If Competitive Services Are As Easily Accessible As Incumbent Services.

For time immemorial, consumers have accessed retail DA services through the simple, easy-to-remember, nationally-uniform 411 DA access code (and later 555-1212). Any new entrant seeking to offer competitive DA services likewise must offer consumers a simple, easy-to-remember, uniform (nationally or within such smaller area the provider intends to serve) number to access its services. This is essential because consumers using telephone DA services are usually pressed for time or lack ready access to paper or electronic directories. Such consumers will be unwilling or unable to look up one number (for a competitive DA provider) in order to obtain another. Thus, a DA provider's number must be easy to recall or it stands no chance of competing against traditional services that already enjoy this characteristic.

Moreover, the number a DA provider uses must be easy for consumers to associate with DA services. Thus, national numbers that otherwise might fit the bill (such as 800 numbers), but which have not traditionally been used for pay-per-call services such as directory assistance[7] or are otherwise foreign to DA users, are inadequate to promote viable competition with incumbent DA providers.

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[7] The Communications Act and the FCC's rules restrict the provision of pay-per-call services (*i.e.*, services for which a charge is assessed upon the completion of a call) using 800 numbers or other numbers widely understood to be toll free. 47 U.S.C. § 228(c)(7); 47 C.F.R. § 64.1504. However, "directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate" are exempt from these restrictions. 47 U.S.C. § 228(c)(8)(D)(ii); 47 C.F.R. § 64.1504(f)(1)(ii).

B. LECs Have Market Incentives And The Technical Capability To Impede Competitors' Ability To Offer Easily Accessible Services To Consumers.

1. LECs Have Motive And Means To Exclude Competitors From The Wireline Retail Directory Assistance Market.

The retail DA market is currently dominated by the LECs who control the traditional 411 and 555-1212 DA access numbers.[8] The market, which has remained largely insulated from competition, yields LECs, in the aggregate, billions of dollars of revenue annually.[9] The introduction of competition in the retail DA market, on the other hand, would create competitive pressures requiring the LECs to reduce DA prices and/or invest in improvements to DA services. Ultimately, retail DA competition could result in a decline in LECs' DA revenues. Accordingly, LECs have every economic incentive to do what they can to continue to exclude competitive DA providers from access to the retail market.[10]

Unfortunately, LECs also have the means to exclude competitive DA providers from access to consumers. LECs control the local switching facilities that must be programmed to route calls to competitive DA providers that seek to offer retail services through easy-to-

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[8] Local calls to 555-1212 are handled by the LEC. Long distance 555-1212 calls, *i.e.*, calls to NPA-555-1212, are handled by the caller's long distance provider.

[9] According to Frost & Sullivan, the total United States DA market is expected to grow to $4.93 billion this year. *See*, *Ex parte* letter from Kelly Cameron, counsel for Telegate, Inc. to Ms. Magalie Roman Salas, FCC Secretary, CC Docket No. 99-273, Affidavit of Stephen E. Siewek ¶ 14 (March 10, 2000) (citing Frost & Sullivan study). Although local DA call volumes are declining, local DA revenue is still over $2 billion annually, and national DA call volumes (which increasingly are being handled by LECs offering national DA through 411) are increasing steadily, with national DA revenues expected to grow to $1.69 billion by 2006; Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended, Notice of Proposed Rulemaking, CC Docket No. 99-273, FCC 01-384, ¶¶ 19-20 (rel. Jan. 9, 2002).

[10] Even if LECs eventually were to agree voluntarily to implement 555 numbers, the price they rationally would charge would include not just the actual costs to implement the numbers, but an additional premium for the LECs' expected loss of revenue resulting from increased competition in the retail DA market.

remember, nationally uniform numbers such as 555 numbers. As Commissioner Abernathy recently acknowledged, this kind of control over "essential network facilities" creates structural barriers that impede competition from developing in the absence of regulatory intervention.[11]

2. LECs Have Refused To Implement Competing Directory Assistance Providers' Numbers.

In InfoNXX's experience, LECs are willing to exploit their control over network facilities to prevent or significantly delay the introduction of competitive DA services in their markets. To illustrate: In 1994, InfoNXX obtained national 555 numbers when the North American Numbering Plan Administrator ("NANPA") first assigned the numbers pursuant to guidelines developed by the Alliance for Telecommunications Industry Solutions ("ATIS")-sponsored Industry Numbering Committee ("INC").[12] After considering a variety of alternatives, InfoNXX determined to utilize one or more of these 555 numbers to provide consumers with direct access to InfoNXX's competitive DA services. InfoNXX has invested significant resources in developing its consumer services and working with wireless and wireline carriers to implement the technical changes necessary to permit consumers to access those services through InfoNXX's 555 numbers. Although InfoNXX's efforts have been received enthusiastically in the wireless context and InfoNXX is currently rolling out services to some

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[11] *See*, "My View From the Doorstep of FCC Change," Address to the Indiana University by Commissioner Kathleen Q. Abernathy, March 4, 2002, at 4 ("[W]e must resort to regulatory intervention if structural barriers impede competition from developing in the first place. For example, achieving competition in local wireline telephony requires governmental intervention, because incumbent local exchange carriers' control of essential network elements (particularly the last mile, local loop) would preclude competition from other wireline carriers absent such intervention.").

[12] *555 Assignment Guidelines*, INC 94-0429-002 (reissued Apr. 10, 2000) ("*555 Assignment Guidelines*").

wireless customers,[13] wireline LECs have refused to cooperate reasonably with InfoNXX to implement its 555 numbers. After waiting in vain for LECs to establish tariffs or interconnection arrangements for 555 number assignees,[14] InfoNXX tried to work directly with specific LECs to obtain the local switching modifications necessary to implement its 555 numbers.[15] For example, InfoNXX has been planning to pilot enhanced DA services (including a wireless white pages service called MobileSource℠ and a Spanish language service called TeleMas℠) to both wireless and wireline customers in Phoenix, Arizona using its assigned 555 numbers. To date, however, InfoNXX has been unable to obtain sufficient cooperation from Qwest, Phoenix's incumbent LEC, to activate the numbers. After failing to respond to InfoNXX's initial inquiries, Qwest eventually proposed to activate InfoNXX's 555 numbers at a cost and timeframe that are unreasonable and prohibitive for smaller DA providers. Thus, InfoNXX's innovative DA services remain unavailable to wireline customers in the Phoenix market (although they are now available to some wireless customers). More recently, InfoNXX sent letters in December 2001 to the remaining Bell operating companies and several other ILECs seeking cooperation in implementing its 555 numbers. The only responses thus far, from Verizon and SBC, have stated that the LECs are unwilling at this time to take steps to implement InfoNXX's proposal to route its 555 numbers.

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[13] InfoNXX already has a contract to offer its retail services to one wireless carrier's customers and has a pending contract with another wireless carrier.

[14] An industry report in March 2000 revealed an almost total absence of 555 access tariffs or 555 interconnection agreements. Network Interconnection Interoperability Forum ("NIIF") 555 Industry Report (visited April 1, 2000) <www.atis.org/pub/clc/inc/npa/npa131.doc>. To InfoNXX's knowledge, the situation has not changed since issuance of the NIIF Report.

[15] To implement 555 services, it is necessary that local telephone switches recognize seven-digit 555 numbers, route calls appropriately, and include the proper customer information to facilitate billing.

3. LECs Have Not Activated *Any* 555 Numbers.

InfoNXX is not alone in experiencing frustration in activating its 555 numbers. To InfoNXX's knowledge, *none* of the 555 numbers assigned to non-LEC users has yet been implemented by the LECs. This complete failure comes despite the nearly eight years that have elapsed since the initial assignment of 555 numbers to non-LEC users and the LECs' continued use of 555-1212 and other 555 numbers for their own services.[16] Absent action by the Commission, this glaring failure to use a vital numbering resource (which has implications beyond the DA market) will continue. As a consequence, LEC efforts to refuse or delay implementing 555 numbers will preserve their control of the retail DA market and suppress competitive pressures to reduce DA prices and/or improve DA services. Accordingly, regulatory intervention is necessary to counteract the LECs' economic incentives to exploit their structural control over local switching facilities to suppress competition in the retail DA market.

C. Consumer Inertia Stymies Efficient Market Movement Away From Established Directory Assistance Dialing Conventions.

Even if InfoNXX and other competitive DA providers eventually are able to offer their DA services through simple, easy-to-remember, uniform numbers, they would remain at a significant competitive disadvantage to the dominant LECs if the numbers that consumers have habitually come to rely on for DA services remain available and under the control of the traditional LEC DA providers. It is a basic principle of marketing that consumer buying

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[16] LECs currently make 555 numbers available to their customers both for DA (555-1212) and for reporting network outages and requesting service calls. For example, Verizon/Bell Atlantic customers in Maine, New Hampshire, and Vermont can use 555-1611 to report network outages. Appendix B of *555 Technical Service Interconnection Arrangements*, ICCF96-0411-014 (Reissued Sept. 10, 1999) ("*555 Technical Service Interconnection Arrangements*"), lists several 555 numbers which are in use in particular NPAs.

decisions have become habituated, and thus involve little or no consideration of alternative purchasing options, are much harder to change than decisions subject to more deliberation.[17] This type of habitual, or routinized, decision-making generally occurs when the consumer has faced the decision many times and has found an acceptable (or the only) alternative.[18] In these circumstances, the consumer performs little or no evaluation of the alternatives and purchases in a habitual, automatic manner.[19] It can be expected that the effect of this habituation will be heightened where the consumer has virtually never been in a position to evaluate alternative products or service offerings because a monopoly provider historically has offered the only option.

The ability of this kind of habitual decision-making to prevent customers from taking advantage of alternative products and services has already been seen in the retail DA market. Because consumers are so accustomed to using 411 for DA, they rely on it even when services are available from alternative sources. For example, long distance carriers have long offered national directory assistance services, either through NPA-555-1212 or more recently through services like AT&T's "00-info." However, once LECs began offering national DA through 411, consumers quickly reverted to the traditional 411 access code and DA call volume to national long distance carriers has fallen dramatically – by InfoNXX's estimates, over 60% in recent years.

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[17] Henry Assael, *Consumer Behavior and Marketing Action* 54 (3rd ed. 1987).

[18] *Id.* at 54-55.

[19] Del I. Hawkins, et. al., *Consumer Behavior: Implications for Marketing Strategy* 536 (3rd ed. 1986).

III. THE COMMISSION SHOULD REQUIRE ALL DIRECTORY ASSISTANCE PROVIDERS (LOCAL INCUMBENTS AND COMPETITORS ALIKE) TO PROVIDE DIRECTORY ASSISTANCE SERVICE THROUGH 555 NUMBERS.

A. Requiring LECs to Implement 555 Numbers Is The Most Efficient And Competitively-Neutral Way For The Commission To Assure Competitive Directory Assistance Providers Viable Access To Consumers.

Meaningful competition in the retail DA market depends upon competitors having access to consumers through simple, accessible telephone numbers. Although the Commission is considering a number of proposals to accomplish this result, by far the most effective and efficient approach would be to require all DA providers to offer DA services using 555 numbers. This approach would avoid the technical and administrative burdens and pitfalls of 411 presubscription, would put incumbents and new entrants on equal footing, and would cause minimal consumer confusion.

1. Implementing 555 Numbers For DA Services Would Be Simple In Comparison To The Technical and Administrative Problems Associated With 411 Presubscription.

Although the ILECs have refused to implement 555 numbers for anyone but themselves, the process of activating 555 numbers for DA services should be relatively straightforward and administratively uncomplicated. *First*, it is obvious that the ILECs can route 555 calls: they do it for themselves everyday. Moreover, technical standards for 555 number implementation for other users have already been established. The *555 Technical Service Interconnection Arrangements* developed by the Industry Carriers Compatibility Forum ("ICCF") in 1999 describe the technical requirements, network considerations, and possible architectures for the implementation of 555 numbers.[20] In InfoNXX's experience, activating

[20] *555 Technical Service Interconnection Arrangements*.

non-LEC 555 numbers requires LECs to modify their end office switches so that the switches no longer automatically transfer all local 555 calls (disregarding the last four digits) to the LECs' operator services. At present, two approaches are available to make this change:

Translated 800 number solution: The 800 number approach would allow the LEC's end office switch to continue to respond to all 555-XXXX numbers the same, but would replace the current response (automatic transfer to the LECs' operators) with a trigger that would query a database that would correlate the specific 555 number dialed with an 800 number and then the call would be forwarded (through the 800 number database) to the appropriate DA provider. This approach is technically fairly simple, but would impose substantial costs on DA providers by requiring them to pay for both 800 number translation (on a per-call basis) and per-minute 800 number usage.

Routing 555 number solution: The 555 number routing approach, on the other hand, would require LECs to program the end-office switch to recognize seven-digit 555 numbers and route them to the appropriate DA provider (generally over lines leased at wholesale rates). Although the 555 number approach would require switch upgrades and thus may be somewhat more time-consuming at the outset than the 800 number approach, this approach has many advantages that outweigh the up-front costs. It would result in more efficient, competitively-neutral handling of 555 calls and would minimize the long-term costs of providing service for all DA providers. And as long as the costs for implementing the technical solutions required to promote retail DA competition are shared equitably among all DA providers, the 555 approach would not impose any undue burdens or costs on the LECs.

Second, 555 numbers have already been assigned to all existing DA providers – including the Bell operating companies and the current competitive providers – and thus can be

used for DA services by at least the major players without any intervening administrative action. In the event that smaller LECs or new entrants need new 555 numbers, they could obtain them on the secondary market from existing assignees or the Commission could reclaim and reassign 555 numbers whose holders have no concrete plans to put them to use.

Third, the database needed to route 555 calls to the appropriate DA provider would be small (consisting only of the DA providers serving the applicable market) and easy to administer because it would need to be updated only when a new competitor entered the market (or an existing provider left) or when a provider's routing information or 555 number itself changed.

By contrast, a 411 presubscription regime would be administratively and technically complex and time-consuming:

- LECs (or perhaps state regulatory authorities) would need to administer and DA providers and consumers would need to participate in a DA provider selection process during which consumers would need to pre-select their preferred DA provider before 411 presubscription could go into effect. The "balloting" exercise for long distance preselection during the mid-1980s was tremendously time-consuming and expensive for everyone involved, and required micromanaging by the Commission (what to do with no responses? how long do consumers have to vote? how much disclosure is required?).

- Each LEC (or an independent database administrator) would need to create and maintain a massive 411 presubscription database – it would equal the size of the current long distance database – that would relate each subscriber's telephone number to its pre-selected DA provider. The database would need to be updated every time a subscriber changed his or her DA provider selection, creating significant ongoing administrative costs and responsibilities.

- The complexities of administering the 411 database would increase the chances of slamming-type situations in which a subscriber's preferred DA provider could be switched without his or her permission.

2. Widespread Use of 555 Numbers To Provide DA Services Would Promote Competitive Neutrality In The Retail DA Market.

The introduction of 555 numbers for retail DA service would enable all DA providers to compete fairly in an efficient market in which consumers could easily "shop" among competing DA providers. Under a 411 presubscription regime, on the other hand, competitors would theoretically have an opportunity to offer their services in lieu of the incumbent, but the incumbent provider would have significant, ongoing competitive advantages.

If all DA providers offered retail service through 555 numbers, competitors would begin their marketing campaigns on relatively equal footing. By making the 555 number the focus of marketing efforts, the well-established brand name of the incumbent would convey less of a competitive advantage. Each provider would focus its marketing on educating consumers about its 555 number and distinguishing the services offered through its number from those of other providers. The emphasis would be on service features and price, and consumers would be in a position to make educated decisions between providers and their services.

Moreover, a market in which providers offered services through 555 numbers would be vibrant and always open to new entrants. Competitors would be free to enter the market when and where they have the resources to market their services. New entrants could enter the retail DA market gradually over time as competition and market opportunities develop. Because 555 numbers can be assigned on either a regional or national basis, a new entrant could even enter the DA market in a small region and expand geographically with the growth of its

business and resources.[21] This kind of vibrant market, always open to new competitors, would best assure continued DA service innovation and ongoing consumer benefits.

Finally, a retail DA market characterized by consumers actively selecting their DA provider each time they place a DA call would be highly efficient. Consumers could freely shop among DA providers with each DA call without incurring any transaction costs. In such circumstances, market efficiency is enhanced and the DA provider offering the best service at the best price has the greatest chance for success.

A 411 presubscription regime, on the other hand, would offer only limited opportunities for competitors while strongly favoring the incumbent provider. History shows that many (and maybe most) consumers would not preselect a DA provider, particularly because many consumers do not now use DA services extensively and preselection could take place before they can be educated about the competitive DA innovations that might make DA services more useful. The Commission either would have to assign non-responsive customers to competing providers (which is what happened in long distance balloting) or hand the incumbent a substantial market share.

The incumbent also would benefit disproportionately from its well-established company name. In a 411 presubscription campaign, all DA providers would compete to offer services using the same number (411). Thus, the distinguishing feature in advertising would be the company's brand name (since that would be what consumers would be choosing on the presubscription ballots), and the established brand of the incumbent would have a significant competitive advantage over unproven new entrants. This advantage would be magnified where

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[21] *555 Assignment Guidelines* ¶ 3.1.

consumers face administrative and possible financial consequences from a "wrong" preselection choice (because a change in DA provider selection would require notification of the LEC and probably payment of a provider change fee). Under those circumstances, many consumers would likely choose "the [incumbent] devil they know rather than the devil they don't."

Finally, incumbent providers would have a significant competitive advantage because they have the resources to conduct a well-funded presubscription campaign and also enjoy existing relationships with customers. Though the Commission cannot be expected to erase all advantages one party may enjoy in a competitive environment, it should be concerned about allowing those advantages to be locked in place after a one-time event. Success in the retail DA market under a 411 presubscription regime would likely hinge on the success of the initial presubscription campaign. Once the presubscription period concludes, competitive DA providers (and later entrants) would face significant customer inertia in trying to convince customers to take the necessary steps (and incur the costs) to change their DA provider selection. The churn that has characterized the long distance market, with its aggressive marketing and customer win-back campaigns, is not likely to take place in the DA market where the economic benefit of switching providers for a consumer and the economic value of a customer to a provider are much smaller. Thus, incumbent advantages at the initial prescription stage could be frozen, and this should be taken into account by the Commission in crafting market-opening policies.

3. Providing DA Services Through 555 Numbers Would Cause Minimal Consumer Confusion.

While the introduction of a 411 presubscription campaign would likely engender significant confusion among consumers (who would now be asked to preselect, from three

separate provider lists, an interLATA provider, an intraLATA provider, and a DA provider), consumers are unlikely to be confused by the use of 555 numbers to access DA services. Consumers already associate the 555 prefix with DA services from using 555-1212. Moreover, the aggressive marketing campaigns competitive providers are likely to undertake to promote their new 555 services should further educate consumers about the use of 555 numbers to access DA services from a number of competing providers.

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Based on the foregoing, it is clear that requiring DA providers to offer retail DA services through 555 numbers presents significant administrative and competitive advantages over 411 presubscription. Accordingly, the Commission should affirm that LECs are obligated to modify their local networks to recognize and route seven-digit 555 numbers to the appropriate DA provider. The Commission should set a date certain by which LECs must make these modifications, and should require all DA providers who offer service in a LEC's market to contribute equitably to the reasonable costs of making the necessary modifications.

B. Phasing Out The Use of 411 (and 555-1212) For Directory Assistance Is A Necessary Step To Ensure Genuine Competition In The Retail DA Market.

In addition to assuring implementation of 555 numbers for all DA providers, the Commission should phase out the 411 and 555-1212 default DA access numbers. Such a phase-out is essential to ensure genuine competition in the retail DA market. Although the phase-out of 411 and 555-1212 will require a period of adjustment, it need not result in undue consumer

confusion. Moreover, the elimination of 411 as the DA access code will have the added benefit of freeing up a scarce N11 code for more beneficial uses.[22]

1. Elimination Of Default Numbers Will Bolster Retail DA Competition.

As noted above, consumer inertia will discourage consumers from making the move from 411 to competitors' 555 numbers, simply because they are in the habit of using 411 to access DA services. In addition, the Commission's own studies reveal that consumers are much more likely to use a three-digit access code than a seven-digit number. In N11 trials conducted in various localities the Commission found that "intelligent transportation systems are substantially more likely to succeed when they are accessible via an N11 code."[23] In a three-month trial in Kentucky and Ohio, Kentucky residents dialed 211 to reach the traveler information service and Ohio residents dialed 333-3333 to reach the same traveler information.[24] Seventy-two percent more calls were made to 211 than to 333-3333.[25] This evidence demonstrates that if LECs were allowed to keep 411, consumers would be more likely to dial

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[22] There are only eight possible N11 codes available, making N11 codes among the scarcest of numbering resources under the Commission's jurisdiction. *See See Implementation of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Third Report and Order and Order on Reconsideration, 15 FCC Rcd 16,753 (2000) (*"N11 Third Report and Order"*). Prior to enactment of the 1996 Act, Bellcore, as administrator of the NANP, assigned the following N11 codes for national use: 411 for access to local directory assistance; 611 for access to LEC repair services; 811 for access to LEC business offices and 911 for access to emergency service. Since 1996, the Commission has assigned 211 for access to community information and referral service, 311 for access to non-emergency police and other government services, 511 for access to traveler information services and 711 for access to Telecommunications Relay Services. In 2000, the Commission further clarified that it had determined not to disturb Bellcore's designation of 911 and 411, but because the use of 611 and 811 was less ubiquitous, the Commission concluded that carriers could continue the current uses of these N11 codes until they were needed for other national purposes. *Id.* at 16,774.

[23] *Id.* at 16,756.

[24] *Id.*

[25] *Id.*

411 than any newly allocated 555 number. Furthermore, it is likely that the disparity in calling patterns would be even more pronounced for 411, with its long history as the primary DA access code.

Numerous European regulators have already recognized that in order to create a level playing field for competition in the DA market, it is absolutely necessary to remove the default numbers historically used by incumbent carriers to provide DA services.[26] For example, Germany undertook to open its DA market to competition in 1998. Concluding that competition could not flourish while the default DA code remained in use, Germany assigned new numbers to all DA providers and eliminated the default code. By 2000, thirty-nine numbers had been assigned to twenty-eight companies for DA services and the largest rival to Deutsche Telekom had gained 25% of the DA market.[27]

Using Germany's experience as a model, The Office of Telecommunications ("Oftel") in the United Kingdom determined to open its directory enquiry ("DQ") market last fall.[28] Oftel conducted market studies finding that there was ambivalence in consumers' attitudes towards the U.K. default code, 192.[29] Given this consumer indifference and the consumer benefits gained from the introduction of competition in other countries that had liberalized their

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[26] The regulators in Germany, Ireland, Austria, United Kingdom and Spain have withdrawn or plan to withdraw the default code for DA assistance in their respective countries.

[27] Office of Telecommunications ("Oftel"), "*Access codes for directory enquiry services: A Statement issued by the Director General of Telecommunications*," Chapter 2 (rel. Sept. 19, 2001) ("*Oftel Statement*").

[28] *Oftel Statement* S.10, (electing to introduce a new number range both for DQ service providers and network operators and to eliminate the default code utilized by network operators after a period of "parallel running").

[29] *Id.* Chapter 1 ¶ 1.9.

DA markets, Oftel ordered the withdrawal of the 192 default code. [30] Oftel found that implementing a completely new number sequence for DQ services and eliminating the default code was the only option that would ensure equality in the allocation of new numbers and successfully promote competition.[31]

The European experience can readily be applied to the United States' DA market. True competition will not develop if the default 411 and 555-1212 access numbers remain available and under the control of the LECs.

2. Consumers Can Readily Adapt To the Elimination Of 411.

The 411 and 555-1212 access numbers can be eliminated without undue consumer confusion. Even if there is some initial confusion or concern, it will not outweigh the competitive benefits that would be achieved with the elimination of the default codes.[32] The Commission has recognized that while use of N11 codes for information services may be convenient, it is "by no means essential to making the service available."[33] According to the Commission, there are other ways to achieve this convenience without utilizing N11 resources.[34] In addition, the replacement of 411 with 555 numbers, which are already familiar to consumers

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[30] Oftel considered three options: (1) to introduce a new number range for DQ providers and keep the default code for network operators; (2) to introduce a new number range for DQ service providers, withdraw the default code and create a new default number within the new number range for network operators; and (3) to introduce a new number range and eliminate default codes for network operators. Oftel determined that the third option would best promote competition in the DA market. *See Oftel Statement* S.4 and Chapter 1 ¶ 1.7.

[31] *Id.* Chapter 2 ¶ 2.2.

[32] *Id.* Chapter 1 ¶ 1.12.

[33] *See Implementation of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5572, 5584 (1997) ("*N11 First Report and Order*").

[34] *Id.*

as a means to access DA services, should make the transition easier for consumers. Finally, the adoption of an effective transition plan that gives consumers adequate time to adjust to the new method for accessing DA services will minimize customer confusion.

Again, the experience of Germany, where regulators implemented a comprehensive transition plan, is illustrative. After the new codes were assigned, both the new and old numbers were kept operational for five months.[35] Calls to the default code triggered a message explaining the transition prior to connecting the customer.[36] For eleven months after the default number was eliminated, calls to the default number triggered a message explaining the new system and directing callers to dial a new DA number.[37] The German regulator received no complaints about the withdrawal of the default DA code.[38] Oftel also has adopted a transition plan that will retain the default code for twelve months after the new numbers have been implemented.[39]

Consumer confusion in the United States can likewise be alleviated by adopting a transition plan, similar to the plans employed in Europe, that allows time for DA providers to educate consumers about the dialing changes and consumers to adapt to the changed environment.[40] Indeed, consumers in the United States have already demonstrated, in the context of area code overlays, their ability to adapt to changes in dialing patterns. As a condition to

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[35] *Ex parte* letter from Ruth Milkman, Counsel for Telegate, Inc. to Ms. Magalie Roman Salas, FCC Secretary, CC Docket 99-273 at 4 (Sept. 26, 2001).

[36] *Id.*

[37] *Id.*

[38] *Id.* at 3.

[39] *Oftel Statement*, S.9.

[40] InfoNXX is willing to commit significant resources to marketing its 555 numbers for national directory assistance and other specialized DA services.

implementing an all-services area code overlay, the Commission has required the elimination of seven-digit dialing and the use of ten-digit dialing for all local calls.[41] The Commission explained that it would require mandatory ten-digit dialing to ensure that competition would not be deterred as a result of "dialing disparity."[42] The transition to ten-digit dialing is generally implemented through a transition period that includes a period of permissive ten-digit dialing followed by mandatory ten-digit dialing (with a recorded message reminding consumers who attempt to dial seven digits of the dialing change).

To likewise prevent "dialing disparity" from impeding competition in the retail DA environment, the Commission should adopt a similar transition plan for the phase-out of 411 and 555-1212. Specifically, the Commission should require a permissive 555 dialing period extending for six months after the date by which LECs are required to implement 555 numbers, followed by mandatory 555 dialing (and the permanent elimination of 411 and 555-1212). For an additional twelve months after the elimination of 411 and 555-1212, LECs should be required to maintain a recording reminding consumers dialing 411 or 555-1212 of the dialing change (but not referring them specifically to the LEC's own 555 DA number).

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[41] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd, 19,392, 19,518-19,519 (1996) ("*Local Competition Second Order*"), *vacated in part, California v. FCC*, 124 F.3d 934 (8th Cir. 1997), *rev'd AT&T v. Iowa Utils., Bd.*, 199 S. Ct. 721 (1999).

[42] *Local Competition Second Order*, 11 FCC Rcd at 19,517-19,518.

C. The Commission Has The Statutory Authority To Require LECs To Implement 555 Numbers And To Phase Out 411 and 555-1212.

The Commission has broad statutory authority, pursuant to Sections 201, 202, 251(b)(3) and 251(e) of the Communications Act of 1934, as amended (the "Act"), to recall the 411 access code and 555-1212 and to require LECs to implement new 555 numbers.

Under Section 251(e) of the Act, the Commission has broad and exclusive authority over numbering in the United States.[43] Specifically, the Commission has jurisdiction over numbering administration, and over those portions of the North American Numbering Plan ("NANP") that pertain to the United States. The Commission may delegate all or part of its numbering administration authority to state commissions or other entities. Courts have affirmed that the Commission's broad authority under Section 251(e) includes, for example, the authority to dictate the number of digits dialed by consumers making local calls.[44]

In the exercise of its authority under Section 251(e), the Commission has generally sought to maintain a nationwide, uniform system of numbering to promote the efficient delivery of interstate and international telecommunications.[45] Specifically with respect to N11 codes, the Commission has explicitly retained its authority to designate and assign N11 codes for nationwide use.[46] Despite the fact that most individual N11 calls are likely to be intrastate, the Commission has determined that N11 numbers have significance beyond state boundaries and

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[43] 47 U.S.C. § 251(e).

[44] *People of the State of New York v. FCC*, 267 F.3d 91, 102-104 (D.C. Cir. 2001).

[45] *N11 First Report and Order.*

[46] *See N11 Third Report and Order*, 15 FCC Rcd at 16,775.

should be allocated in a consistent manner on a nationwide basis in order to achieve the maximum public benefit.[47]

The Commission's exclusive authority to administer N11 codes includes the accompanying authority to reclaim such codes. In the *N11 First Report and Order*, the Commission determined that it was unnecessary to adopt specific rules for recall of N11 codes, noting that "widely distributed industry numbering documents consistently and unambiguously state that an N11 code assignment is not a permanent assignment and is subject to termination on short notice."[48] The Commission has stated that it is willing to take action to reclaim an N11 code if an N11 assignee is unwilling to cooperate with a national recall.[49]

The Commission's authority over numbering administration also encompasses the authority to require LECs to implement 555 numbers. Seven-digit 555 numbers, like N11 codes, may be utilized on a nationwide basis.[50] Moreover, valuable 555 numbering resources are assigned by the North American Numbering Plan Administrator, over which the Commission exercises authority pursuant to Section 251(e). The authority to assign numbering resources certainly also encompasses the authority to ensure that those numbers are put into service as

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[47] *Id.*

[48] *N11 First Report and Order*, 12 FCC Rcd at 5609 (noting that state commission authorization orders permitting N11 use, which remain in effect, consistently state that such use is subject to termination or other modification on short notice, typically six months). The Commission should confirm in this proceeding that "short notice" means no more than six months.

[49] *Id.* (noting that the Commission would provide parties sufficient notice of the recall and an opportunity to be heard on how the recall should be enforced).

[50] 555 numbers may be designated either national (used in at least 30% of NPAs or states) or non-national (used in fewer than 30% of NPAs or states).

contemplated by the assignment and as required under Section 52.9 of the Commission's Rules, which requires the efficient and timely use of telephone numbering resources.[51]

The Commission's authority to require LECs to activate 555 numbers for other parties further derives from Section 251(b)(3) and Sections 201(b) and 202(a) of the Act. Under Section 251(b)(3), LECs must provide competing providers of telephone exchange service with nondiscriminatory access to telephone numbers. In the *SLI/DA First Report and Order*, the Commission determined that DA providers that provide call completion service or act as agents of CLECs provide (or can enforce the rights of those who provide) "telephone exchange service."[52] Thus, the LECs' failure to activate 555 numbers of DA providers offering call completion services violates Section 251(b)(3). In addition, Sections 201(b) and 202(a) of the Act give the Commission authority to require LECs to provide non-discriminatory access to 555 numbers to DA providers. Section 201 of the Act requires "every common carrier . . . to furnish . . . communication service upon reasonable request therefor" pursuant to just and reasonable charges and practices.[53] Section 202(a) requires carriers to treat their customers fairly and to offer their services on a nondiscriminatory basis.[54] LECs violate Section 202 when they refuse to implement an assigned 555 number upon reasonable request. This discriminatory

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[51] 47 C.F.R. § 52.9. The Commission also has noted that the two primary goals of the 1996 Act are to ensure that scarce numbering resources are used efficiently for the benefit of consumers and to encourage competition in the telecommunications marketplace. *See, e.g., In re Numbering Resource Optimization*, 15 FCC Rcd 7574, 7577 (2000). The Commission's Rules further require that the administration of telecommunications numbers "[n]ot unduly favor or disfavor any particular telecommunications industry segment . . . ." 47 C.F.R. § 52.9(2).

[52] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2746.

[53] 47 U.S.C. § 201(b).

[54] Section 202 states that "[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services . . . ." 47 U.S.C. § 202.

treatment is more glaring when one considers that the service being affected – directory assistance – is one that would compete directly with the LEC. The LECs also violate Section 201 when they seek to impose unreasonable rates, terms, and conditions for activating a 555 number. The Commission has broad authority to rectify these violations and to establish rules to prevent future violations.

IV. ALTERNATIVE PROPOSALS FOR PROMOTING COMPETITION IN THE RETAIL DIRECTORY ASSISTANCE MARKET ARE NOT WORKABLE.

Although the Commission has before it a number of proposals, in addition to InfoNXX's 555 proposal, for promoting competition in the retail DA market, these alternative proposals are woefully inadequate to accomplish the goal of introducing genuine competition in the market for retail wireline DA services.

411 Presubscription. As discussed in detail above, the 411 presubscription proposal would impose significant technical and administrative burdens on LECs, competitive providers and consumers. The 411 presubscription process would be expensive and time-consuming, without offering any significant consumer benefits over InfoNXX's 555 proposal. Moreover, a 411 presubscription regime would preserve much of the incumbent provider's competitive advantage in the retail DA market.

Access To Consumers Through 411XX/411XXX Codes. This proposal, while preserving some vestige of the familiar 411 DA access code, in fact would create more consumer confusion than a shift to 555 numbers for DA services. In addition to being educated about the introduction of DA competition, consumers would have to be educated that 411XX or 411XXX is a genuine number that actually works – which would require much effort because a five-digit or six-digit number is not a standard dial string in the United States. These changes could be

confusing for consumers and could lead to significant consumer backlash. Equally important, this proposal does not contain enough numbers. Although each LEC (of which there are over a thousand) may want its own DA number, the 411XXX proposal only provides one thousand or so possibilities.

Use Of Carrier Access Codes (CACs) (101XXXX). This proposal likely would also cause significant consumer confusion because consumers associate 101XXXX numbers with "dial-around" long distance services. As with the 411XX/411XXX proposal, this proposal would require double the amount of consumer education with no benefit. (And it could even have a negative effect on the dial-around market because there may be confusion about whether "10-10" remains a dial string for cheap long distance service or has been changed to directory assistance.) The use of CACs could also exclude important users, such as business employees, from the retail DA market. This is because many business PBXs are programmed to block calls to 101XXXX numbers in order to prevent employees from dialing around the business's selected long distance carrier.

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All of these proposals, along with InfoNXX's 555 proposal, depend upon the ability to obtain billing and collection service from the LECs. This presents another opportunity – which the Commission should monitor closely – for LECs to create barriers to competitive entry in the retail DA market. LECs generally require smaller DA providers to work through third party billing companies to get their charges on a LEC's bill. These third party billers, passing on LEC charges and charging their own fees, impose costs which can become substantial in relation to DA revenue and can significantly harm price competition by increasing the prices competitive DA providers must charge their customers. Because these costs are paid only by

competitive DA providers (not the LECs themselves), there is a risk that the LECs could manipulate these charges (by increasing what the LECs charge third party billing firms) to keep DA prices artificially high. The Commission should ensure that LECs do not employ such "back-door" methods to impede retail DA competition.

V. THE COMMISSION SHOULD PREEMPT STATE REGULATION TO THE EXTENT THAT IT IS INCONSISTENT WITH OR IN ADDITION TO COMMISSION REGULATIONS.

Preemption of state regulations imposing additional obligations on competitive DA providers offering service through 555 numbers is consistent with both the Commission's authority and the public interest. As previously explained, the Act gives the Commission exclusive jurisdiction over the administration and implementation of numbering resources in the United States. Because the Commission's jurisdiction is exclusive, the states have no authority to regulate numbering in a manner inconsistent with Commission rules. Moreover, competitive DA services using national or regional 555 numbers generally will be interstate, with calls routed across state lines to a few call centers. Accordingly, the Commission has – and should exercise – the authority to clarify that any DA provider offering service through a 555 number designated for competitive DA service should not be subject to state regulation inconsistent with or in addition to Commission rules.

Such preemption will not undermine state efforts to protect consumers. Because competitive DA providers lack market power, state regulation of these companies is simply unnecessary to protect consumers. Market forces will ensure that new entrants in the retail DA market provide high-quality, reasonably-priced services, or they will fail. In a market characterized by efficient consumer choice and rigorous competition, any such failure of a competitive provider will not harm consumers, who will have ready access to alternative DA

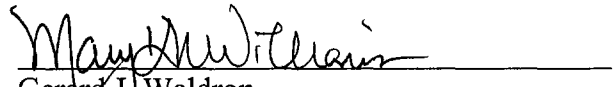
services, including those of the LEC. Thus, state regulation would provide little benefit to consumers while potentially imposing significant costs and burdens on competitive DA providers and thereby impeding the development of competitive retail DA services.

CONCLUSION

In accordance with the foregoing, InfoNXX respectfully urges the Commission to take prompt action to promote meaningful competition in the retail DA market by (1) requiring LECs promptly to make the necessary modifications to their local networks to enable all DA providers to offer DA services through 555 numbers and (2) phasing out the use of the traditional 411 and 555-1212 DA access numbers. The Commission has ample authority to take these steps; market factors require that these steps be taken if the retail wireline DA market is to experience genuine competition; and wireline retail DA consumers stand to reap significant benefits from the resulting competition in the form of reduced prices and innovative services.

Respectfully submitted,

INFONXX, Inc.

By: 

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